BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act	)	
Competitive Bidding	)	

COMMENTS OF TRW INC.

Norman P. Leventhal
Raul R. Rodriguez
Stephen D. Baruch
David S. Keir

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809
(202) 429-8970

November 10, 1993

Attorneys for TRW Inc.

SUMMARY

TRW supports the initiative taken by Congress and the Commission to implement revenue producing spectrum assignment mechanisms for those services where they may be appropriate. However, in fulfilling the Congressional mandate to award licenses expeditiously to terrestrial PCS systems, the Commission must not lose sight of the fact that competitive bidding will not be an appropriate spectrum assignment tool for many radio services. The Commission must ensure that any competitive bidding procedures ultimately authorized are consistent with the objectives and restrictions set forth by Congress under the legislation authorizing use of these procedures.

Under the statutory criteria, competitive bidding is not an appropriate spectrum assignment mechanism for the initial licenses to be awarded in the new Mobile-Satellite Service/ Radiodetermination Satellite Service ("MSS/RDSS") -- a service in which TRW is seeking authorization. The mere fact that mutual exclusivity currently exists among the service proposals of the MSS/RDSS applicants is not enough to justify the imposition of auctions. Before it can determine that the service is appropriate for competitive bidding, the Commission must first make critical policy decisions in the MSS/RDSS spectrum allocation and service licensing rulemaking proceedings (in ET Docket No. 92-28 and CC Docket No. 92-166, respectively). Decisions not yet made in these proceedings provide the Commission with several alternative means to avoid mutual exclusivity among the current applicants, an outcome that would

remove any basis or need for auctions. Therefore, a decision to use competitive bidding at this juncture would be premature.

Using auctions for the MSS/RDSS also would be inconsistent with the objectives advanced by Congress in enacting the legislation, as well as the restrictions placed upon their use. The inherently global nature of the MSS/RDSS satellite systems proposed by five of the six applicants makes the MSS/RDSS fundamentally ill-suited to license assignment by auction. In contrast to PCS, the service which has thus far driven the pursuit of competitive bidding procedures, MSS/RDSS is not a local service and, therefore, is not susceptible to division into spectrum blocks on a market-by-market basis. Use of auctions for MSS/RDSS thus could produce a national monopoly licensee, an outcome clearly not in accord with the congressional mandate that the Commission promote equitable distribution of licenses and economic opportunity for a wide variety of applicants.

Moreover, because of the unprecedented global nature of the MSS/RDSS service, the use of competitive bidding to assign spectrum for what are to be international systems would raise a number of troubling public and national interest issues never before encountered. First, by placing a price on spectrum through bidding, the United States could subject itself to the type of criticism that other nations are drawing in international fora for their participation in schemes to treat the geostationary orbital resource as a commodity for sale to the highest bidder. The U.S. Government is embroiled in sensitive

policy disputes on this matter and the disputes will come to a head at the 1993 and 1995 World Radio Communication Conferences. Applying competitive bidding to international satellite services will have a severe negative impact on the credibility of U.S. positions. Second, auctions in the United States could prompt other countries to adopt spectrum-access fees, resulting in prohibitive entry costs that would make true global service inviable. Finally, at a minimum, MSS/RDSS providers would clearly be at a disadvantage vis-à-vis intermodal competitors such as AMSC and INMARSAT that have not been, or cannot be, required to pay for spectrum use.

In short, while the congressional and Commission objectives underlying the authorization of competitive bidding may make such procedures a logical means of spectrum assignment for the cellular-like domestic terrestrial PCS service, the Commission must not allow the simplistic appeal of competitive bidding procedures to act as a surrogate for its requirement to make the types of difficult decisions that are before it in the MSS/RDSS band rulemaking proceedings. For similar reasons, random selection procedures would be inappropriate, as Congress explicitly intended such mechanisms to be used only in those instances when large numbers of applications had been filed, and many mutually exclusive applicants were seeking each of many available licenses, potentially resulting in a strain on the Commission's resources and the likelihood of substantial processing backlogs.

TABLE OF CONTENTS

TABLE OF CONTENTS

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 309(j) of the Communications Act Competitive Bidding	)	PP Docket No. 93-253

COMMENTS OF TRW INC.

TRW Inc. ("TRW"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415 (1992), hereby submits its Comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding, Implementation of Section 309(j) of the Communications Act, Competitive Bidding, FCC 93-455 (released October 12, 1993) ("NPRM").

I. Introduction

TRW is one of six applicants for authority to establish satellite systems for the provision of voice and data mobile-satellite services ("MSS"), or MSS coupled with radiodetermination satellite services ("RDSS"), in the 1610-1626.5 MHz and 2483.5-2500 MHz bands (the "MSS/RDSS bands"). The applications are all subject to cut-off protection and are currently mutually exclusive. Because the Commission suggests in

its NPRM that it might ultimately use auctions to assign spectrum among these applicants (see NPRM, FCC 93-455, slip op. at ¶¶ 154-155), TRW has a significant interest in the outcome of this proceeding.

TRW applauds the initiative taken by Congress and the Commission to implement revenue producing spectrum assignment mechanisms for those services where they may be appropriate.[1/] The Commission, however, in fulfilling its congressional mandate expeditiously to award licenses to terrestrial PCS systems through a competitive bidding process, cannot lose sight of the restrictions and objectives set forth by Congress. Under newly adopted Section 309(j) of the Communications Act, competitive bidding will not be an appropriate spectrum assignment tool for many radio services -- even some that may otherwise satisfy the statute's general test of auctionability.

In these Comments, TRW demonstrates that competitive bidding is not an appropriate spectrum assignment mechanism for the initial licenses to be awarded in the MSS/RDSS. The mere

---

1/ For example, it is well known that the Commission encountered significant difficulties with non-bona fide applicants during the assignment of authorizations to provide cellular service. As the Commission noted in the NPRM, applicants that had little intention of actually constructing cellular systems were able to obtain licenses and quickly re-sell them at a huge profit. See NPRM, FCC 93-455, slip. op. at ¶ 34 n.22. Thus, access to spectrum was effectively traded based on its market value, but the government reaped only the marginal benefit of taxing the gains on resale. Id. Following this experience, it is expected that the use of competitive bidding procedures in some services could enable the government to realize some of the value of the spectrum resource it is making available.

fact that mutual exclusivity currently exists among the MSS/RDSS applicants is not enough. The Commission must first make critical policy decisions in the MSS/RDSS spectrum allocation and service licensing rulemaking proceedings (in ET Docket No. 92-28 and CC Docket No. 92-166, respectively) -- decisions that may lead to the adoption of rules or policies that remove the current mutual exclusivity. Even then, the Commission is obliged by new Section 309(j) to make a number of specific findings before it is able to use competitive bidding to award licenses, and these statutory prerequisites have not been satisfied with respect to the Commission's tentative determination to hold auctions for licensees in the MSS/RDSS bands. In any event, the inherently global nature of the MSS/RDSS band satellite systems proposed by five of the six applicants raises a number of public and national interest issues, the ramifications of which militate strongly against the use of competitive bidding.

In short, while the congressional and Commission objectives underlying Section 309(j) of the Act may make competitive bidding a logical spectrum assignment mechanism for the domestic terrestrial PCS service, which will closely resemble the cellular service in terms of both the type of service to be provided and the service areas at issue, the Commission must not allow the simplistic appeal of the competitive bidding option to act as a surrogate for its requirement to make the types of difficult decisions that are before it in the various MSS/RDSS band rulemaking proceedings.

II. Competitive Bidding Procedures Are Fundamentally Unsuitable For Assignment Of Spectrum Among The Current Applicants To Provide Global Mobile-Satellite Services In The MSS/RDSS Bands.

A. Final Decisions In Pending Commission Rulemaking Proceedings Pertaining To The MSS/RDSS Bands Are Critical Prerequisites To A Determination As To Whether Auctions Are An Appropriate Spectrum Assignment Mechanism For The New Service, Or Are Even Necessary.

The legislation granting the Commission the authority to use competitive bidding procedures states that the authorization of competitive bidding for license assignment shall not "alter spectrum allocation criteria and procedures established by other provisions of the Act." Omnibus Budget Reconciliation Act of 1993 ("OBRA"), 1993 U.S.C.C.A.N. (107 Stat.) 312, 389 (to be codified at 47 U.S.C. § 309(j)(6)(A)).[2/] In other words, the Commission must make fundamental policy decisions concerning spectrum allocation and licensing criteria before it can determine whether the use of competitive bidding procedures is appropriate. In authorizing the Commission to establish auction procedures, Congress was also careful to require that the Commission proceed in a manner "consistent with

---

2/ The congressional directive encompasses not only decisions regarding general spectrum use, but also admonishes that nothing in the legislation may "be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings." OBRA, 1993 U.S.C.C.A.N. at (107 Stat.) 390 (to be codified at 47 U.S.C. § 309(j)(6)(E)).

the public interest . . . , the purposes of this Act, and the characteristics of the proposed service." OBRA, Pub. L. No. 103-66, 1993 U.S.C.C.A.N. at (107 Stat.) 389 (to be codified at 47 U.S.C. § 309(j)(4)(C)) (emphasis added). Most importantly, Congress authorized the Commission to use competitive bidding procedures only to choose from among two or more mutually exclusive applications for initial licenses. See NPRM, FCC 93-455, slip op. at ¶ 1.

These directives, together, are of special significance with respect to the MSS/RDSS service. With respect to the MSS/RDSS, the "characteristics of the proposed service" are not yet established, and current mutual exclusivity among the MSS/RDSS applicants could be dissolved by the actions the Commission has yet to take in the pending spectrum allocation and licensing rulemaking proceedings in ET Docket No. 92-28 and CC Docket No. 92-166, respectively.[3/] Therefore, to the extent

---

3/ The Commission has issued a notice of proposed rule making in ET Docket No. 92-28, but not a report and order. See Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and the 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Service, Including Non-geostationary Satellites, 7 FCC Rcd 6414 (1992) ("MSS/RDSS NPRM"). The Commission has indicated that it would prefer to develop technical licensing rules for the MSS/RDSS service through use of its new negotiated rulemaking procedures, and convened an advisory committee for that purpose earlier this year. The committee did not reach the desired "consensus," however, and the Commission has yet even to issue a notice of proposed rulemaking in its proceeding in CC Docket No. 92-166, Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to Mobile-Satellite Service and Radio Determination Satellite Service in the 1610-1626.5 MHz and 2483.5-2500 MHz Bands.

that the outstanding issues in the MSS/RDSS rulemaking proceedings include possible means of eliminating mutual exclusivity, as discussed below, these are issues that the statute requires the Commission to consider and resolve prior to considering the use of auctions.

In the absence of final (or at least "effective") rulemaking determinations as to the allocation of spectrum for the MSS/RDSS and the nature of the service to be provided in the allotted bands, the Commission has no way of knowing whether the mutual exclusivity that currently exists among the six applicants will still exist under the new MSS/RDSS rules.[4/] Indeed, several possible scenarios are available to the Commission as means for resolving mutual exclusivity within the current six-applicant MSS/RDSS-band processing group.[5/]

4/ In this regard, TRW notes that there is not now mutual exclusivity in this service among all of the applicants, but simply between one applicant (which alone proposes a bi-directional system using time division multiple access/frequency division multiple access ("TDMA/FDMA") techniques) and the four others that proposed to share the available bands by using code division multiple access ("CDMA") techniques. Although the geostationary MSS application filed by AMSC Subsidiary Corp. ("AMSC") was initially believed to be mutually exclusive with the rest of the applicants, AMSC indicated during the negotiated rulemaking committee deliberations in CC Docket No. 92-166 that now it believes that means of sharing can be devised between its geostationary service proposal and the four non-geostationary orbit MSS/RDSS systems that would employ CDMA techniques.

5/ Even if the Commission were ultimately to conclude that competitive bidding procedures were warranted for the MSS/RDSS service, the only portion of the MSS/RDSS bands that could be included in an auction is the segment of the

(continued...)

For example, if the Commission decided to retain the current requirement that systems operating in the MSS/RDSS bands share the available frequency bands on a full-band interference-sharing basis, the non-conforming system that would use TDMA/FDMA techniques would be excluded (i.e., it would be forced either to amend its application or be disqualified), and mutual exclusivity would be gone. See 47 C.F.R. § 25.141(e) (Each RDSS licensee "will be assigned the entire allocated frequency bands on a non-exclusive basis").[6/] As the Commission noted in its NPRM, because frequencies assigned on a non-exclusive basis do not give rise to mutually exclusive applications, competitive bidding procedures would be inapplicable. See NPRM, FCC 93-455, slip op. at ¶ 145 n.152.[7/]

5/ (...continued)
L-Band at 1613.8-1626.5 MHz. No auction would be required for the S-band spectrum at 2483.5-2500 MHz because all four of the current applicants that propose to use this spectrum have indicated that they can do so on an interference-sharing basis. Similarly, no auction would be required for the 1610-1613.8 MHz segment of the MSS/RDSS uplink band, as all four of the current applicants proposing to use this spectrum have indicated that they can do so on an interference-sharing basis.

6/ See also Amendment to the Commission's Rules To Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, 104 F.C.C.2d 650, 661-62 (1986).

7/ See also NPRM, FCC 93-455, slip op. at ¶ 146 and n.159 (listing a number of private mobile services below 800 MHz and concluding, inter alia, that "in the majority of cases, the listed stations operate on shared spectrum, and therefore there can be no mutual exclusivity").

Alternatively, the Commission could decide to adopt a band segmentation approach that would enable all of the applicants to be licensed in the band, albeit with smaller spectrum assignments than any of them proposed in their initial applications. Two such band segmentation approaches to sharing were recently proposed by applicants in the MSS/RDSS proceedings, and both are pending before the Commission.[8/]

The Commission is thus faced with several alternative means by which resolution of the rulemaking proceedings in CC Docket No. 92-166 and ET Docket No. 92-28 could remove mutual exclusivity among the applicants. Because resolution of these issues is necessary to define ab initio the "characteristics of the proposed [MSS/RDSS] service" under Section 309(j)(4), a finding of "mutual exclusivity" sufficient to trigger the competitive bidding statute cannot be made until they are resolved.

In this regard, TRW observes that the Commission explicitly noted with respect to a service where fundamental decisions concerning technical and service characteristics remain pending that any present decision to implement auctions would be

---

8/ See Joint Spectrum Sharing Proposal of Constellation Communications, Inc., Ellipsat Corporation, and TRW, Inc., CC Docket No. 92-166 and ET Docket No. 92-28, submitted October 8, 1993; Jointly Filed Comments of Motorola Satellite Communications, Inc. and Loral Qualcomm Satellite Services, Inc., CC Docket No. 92-166 and ET Docket No. 92-28, submitted October 7, 1993. Though there are substantial differences between the two recently-filed sharing proposals, each would purportedly accommodate all of the current CDMA and TDMA/FDMA proposals.

premature. Specifically, although the Commission included the proposed Automatic Vehicle Monitoring Service ("AVMS") within the group of private radio services that might be subject to auctions, the Commission stated that it would "delay action on the applicability of competitive bidding to this service because certain fundamental questions about the nature of this service are now being considered in a separate proceeding." NPRM, FCC 93-455, slip. op. at ¶ 145 n.153. The Commission further noted that one important issue to be decided in that proceeding was whether exclusive channels would be assigned in the AVMS, because a negative answer to that inquiry would moot the issue of applying competitive bidding to the service. Id. There does not appear to be any way to reconcile the treatment accorded the AVMS with that proposed for the MSS/RDSS a mere nine paragraphs later.

Finally, and of special significance to the MSS/RDSS-band proceedings, the House Report accompanying OBRA (H.R. 2264) specifically identified the MSS/RDSS service as one case where the Commission could avoid mutual exclusivity through service regulations or threshold qualifications. In emphasizing that avoiding mutually exclusive situations is in the public interest, and that licensing proceedings should not be influenced by the potential for additional federal revenues, the Report stated that:

> The ongoing MSS[/RDSS] (or "Big LEO") proceeding is a case in point. The FCC has and currently uses tools to avoid mutually exclusive licensing situations, such as spectrum sharing arrangements and the

> creation of specific threshold qualifications, including service criteria. These tools should continue to be used when feasible and appropriate.

H.R. Rep. No. 103-111 (May 25, 1993), reprinted in 1993 U.S.C.C.A.N. 378, 585.[9/] This language, of course, does not mean that the Commission ought to erect artificial barriers to entry, but rather that the Commission should not permit the passage of the competitive bidding statute to deter it from using its traditional methods of resolving mutual exclusivity in a manner consistent with its substantive policies.

In sum, there can be no doubt that the central issues of the pending rulemaking proceedings in CC Docket No. 92-166 and ET Docket No. 92-28, including possible means of removing mutual exclusivity among the MSS/RDSS-band applicants, must be evaluated thoroughly -- and resolved -- before the Commission can even consider the MSS/RDSS bands as candidates for assignment through competitive bidding procedures.

B. The Commission's PCS-Based Proposals Are Particularly Ill-Suited For Application To The MSS/RDSS Service.

Given the congressionally mandated exigency in proposing a competitive bidding plan for use in assigning

---

9/ In submitting their joint proposal to the Commission last month, two of the MSS applicants, Motorola and Loral, cited this passage with approval; suggesting that one advantage of their proposal would be avoiding mutual exclusivity. See Jointly Filed Comments of Motorola and Loral at 24 n.41.

personal communications service ("PCS") authorizations, the Commission has understandably geared its initial consideration of competitive bidding mechanisms toward the particular characteristics of that service. See NPRM, FCC 93-455, slip op. at ¶ 1. Indeed, the Congress itself was clearly motivated by the advent of PCS technology in adopting the legislation.[10/] As a result of this primary -- indeed plenary -- focus on the PCS service, very little attention was paid to the fact that a substantial number of the criteria applicable to PCS that were adopted in connection with OBRA's competitive bidding provisions or that are proposed for adoption in the NPRM may not be easily applied to other services.

One example of this difficulty lies in the legislation's explicit requirement that the Commission "prescribe area designations and bandwidth assignments that promote . . . ," inter alia, "equitable distribution of licenses . . . [and] economic opportunity for a wide variety of applicants." OBRA, 1993 U.S.C.C.A.N. at (107 Stat.) 389 (to be codified at 47 U.S.C. § 309(j)(4)(C)). With respect to PCS, the Commission has had little difficulty fulfilling this requirement, as it has created seven different frequency blocks of varying size. See Amendment of the Commission's Rules to Establish New Personal

---

10/ PCS is treated unlike any other service under the legislation, in that OBRA includes specific mandates for the Commission to: (1) issue its Report and Order on PCS within 180 days, and (2) commence licensing of PCS providers within 270 days. See OBRA, 1993 U.S.C.C.A.N. at (107 Stat.) 396-97.

Communications Services, FCC 93-451, slip op. at ¶ 56 (released October 22, 1993) ("PCS Order"). Two blocks of 30 MHz each have been set aside for assignment in each of 51 designated Major Trading Areas, while a 20 MHz block and four 10 MHz blocks will be available in each of 492 Basic Trading Areas. PCS Order, FCC 93-451, slip op. at ¶¶ 76-77. This means that there are more than 2,500 separate bidding opportunities for the initial round of PCS licenses alone (excluding "combinatorial" bids for "national" or "regional" licenses).

It will be much more difficult, if it is possible at all, for the Commission to ensure an equitable distribution of licenses where the services in the spectrum to be assigned are inherently national in scope, or where a single bidder may be able to secure access to the entire bandwidth. The Commission is faced with both of these possibilities in the MSS/RDSS proceedings. Where these situations occur, it is only prudent for the Commission, before moving forward with auctions, to consider whether an auction could be considered a permissible -- much less an appropriate -- method to assign what could be a monopoly license, and whether competition can be promoted when a national license is at issue.

An additional example of the unsuitability for the MSS/RDSS service of the competitive bidding scheme laid out in the NPRM can be found in the Commission's discussion of potential safeguards against market abuses. The Commission noted in the NPRM that it might "wish to limit the concentration of licenses

within each geographic market to prevent abuse of market power." See NPRM, FCC 93-455, slip op. at ¶ 34 n.20. It then noted that "[t]he fact that a[n existing] monopolist in a market would be willing to pay the most for a second license does not indicate that it would best serve the public." Id. Similarly, the fact that a single MSS applicant seeking to serve the national market likely would be willing to pay the most money to guarantee itself sole access to a lucrative market does not indicate that this outcome would serve the public -- it would not.

Again, the local-service focus of the statutory admonitions, and the Commission's concomitant focus on considerations relevant to the PCS process, simply are of no practical utility when it comes to the MSS/RDSS service. It will be impossible for the Commission to take any measures relative to the MSS/RDSS on a market-by-market basis; the breadth of the coverage footprints and the fact that the component satellites themselves are in constant motion preclude such local division of the available spectrum. Although the Commission recognized the mutual exclusivity that is extant in the MSS/RDSS service -- including, presumably, the fact that a grant of the application filed by the TDMA/FDMA system would lead to the creation of monopoly -- it proceeded to declare the service appropriate for competitive bidding procedures without so much as a word about potentially abusive market positions. See NPRM, FCC 93-455, slip op. at ¶¶ 154-55.

In short, the considerations that motivated Congress to enact the competitive bidding legislation and that characterize the Commission's NPRM simply do not apply to a non-local service such as the MSS/RDSS service, for which the number of providers must necessarily be small due to both the scope of the service offered and the enormous expense of implementing such a global system. Furthermore, as TRW explains in the following section, the inappropriateness of the PCS-based procedures for application to the inherently-national MSS/RDSS service is compounded by myriad international ramifications. The Commission must evaluate all of these considerations with direct regard for the MSS/RDSS service, and not cavalierly assume that what is acceptable for a local terrestrial service with upwards of 2,500 licenses will be acceptable to a global service with only a handful -- if that many -- U.S. licensees.

C. Because LEO MSS Is Inherently Global In Scope, International Ramifications Of Assigning Licenses By Auction Must Be Considered.

The MSS/RDSS service will be provided from constellations of multiple satellites that will be in orbits that take them over many land masses outside the United States. The space stations will be capable of being accessed from outside the United States, and thus will be capable of providing service to foreign points on a global, not merely international, basis;

indeed that is one of the primary appeals of the non-geostationary systems.[11/]

Unfortunately, the use of spectrum allocated on a truly world-wide basis creates an additional range of potential pit-falls insofar as the Commission's proposal to award initial MSS/RDSS licenses through competitive bidding is concerned. These difficulties arise from both explicit international agreements and from political realities attendant to more general international allocation policies.

1. Given Recent International Controversies Over Mercantile Treatment Of The Orbit/Spectrum Resource, The Act Of "Bidding" For Spectrum In The United States Will Likely Be Misconstrued Internationally.

It is well-established among members of the International Telecommunication Union ("ITU") that each is to limit "the number of frequencies and the spectrum space used to the minimum essential to provide . . . necessary services." ITU, Radio Regulations, RR No. 339 (1990). Consistent with this international agreement, it is expected that no nation will request access to orbital locations merely for the purpose of trading on slots registered through the ITU for pecuniary gain.

11/ The advent of non-geostationary satellites presents the Commission with a situation that it has never before faced -- the regulation of telecommunications systems that are capable of serving the entire planet, not just selected routes within a coverage area.

Within the past five years, this tenet of international satellite regulation has shown signs of fraying, however, as the demand for satellite orbital positions has increased, and as some nations have begun to view the orbital/spectrum resource as just another scarce commodity -- i.e., one with the potential to be exploited for profit.[12/] Regrettably, the Commission's current proposal to sell frequency spectrum to the highest bidder, though fundamentally distinguishable from the type of profiteering that some administrations are perpetrating,[13/] nevertheless has perceptual parallels with troubling implications.

International services such as the MSS/RDSS inherently entail the reuse of the spectrum over all parts of the world. If the use of this spectrum is auctioned in the United States, providers very likely will be subject elsewhere to demands for payment to access this spectrum -- spectrum that is supposed to be available to all on an as-needed basis. This likelihood will be particularly strong in those nations (e.g., Russia, France, and even Tonga) where there are proponents of satellite systems similar to the U.S. MSS/RDSS systems.

12/ For example, the Kingdom of Tonga ("Tonga") has embarked on a much publicized and criticized plan to register orbital slots for the sole apparent purpose of selling or leasing this resource to others. The late Dean Burch, then Director General of INTELSAT, commented in 1990 that the Tongan satellite agency planned "to conduct its own process of distributing orbital slots by selling or auctioning them to the highest bidder." "INTELSAT Director General Seeks ITU Help Countering Tongasat Effort To Corral Slots," Telecommunications Reports, August 6, 1990.

13/ See footnote 12, supra.

If there is any doubt that the prospect for competitive bidding has negative implications on inherently international systems, one need only look to comments recently filed by Rimsat, Ltd. ("Rimsat") in response to a Petition for Declaratory Ruling filed by Columbia Communications Corp. ("Columbia"). Columbia's Petition seeks a Commission ruling that the United States will adopt a policy vigorously opposing Tonga's attempt to traffic and profiteer in orbital slots, and that the Commission will not accept applications for U.S. earth stations that seek to access spacecraft at orbital locations claimed by Tonga.[14/] In its comments, Rimsat argued that:

> Columbia's allegations that Tonga's licensing of orbital positions constitutes a spectrum grab or trafficking for private or national gain could also be made with respect to the U.S. government, which charges fees for use of the spectrum and which will soon auction spectrum to the highest bidder to raise revenues for the public coffers.

Rimsat Comments, File No. ISP-93-014, at 27 (filed October 15, 1993) (footnote omitted). If competitive bidding is approved for the MSS/RDSS, similar charges will no doubt abound, and the important U.S. interest in preserving both the integrity of the ITU's processes, and in limiting national claims on the orbit/spectrum resource to those necessary to meet national requirements, will be compromised.

14/ See Columbia Communications Corp. Petition for Declaratory Ruling, FCC File No. ISP-93-014 (filed August 20, 1993). Rimsat is a corporation organized under the law of Nevis.

2. Competitive Bidding Procedures Could Undermine The Viability Of The MSS/RDSS Service By Disadvantaging The New Entrants Vis à Vis Competitors Who Do Not Have To Pay For The Right To Use Spectrum.

The implementation of potentially very costly competitive bidding procedures could prove a deterrent to potential service providers where the ventures involved are inherently risky, as is the case with satellite service. See Licensing Space Stations in the Domestic Satellite Service, 101 F.C.C.2d 223, 231 n.42 ("Constructing and operating a satellite system requires an enormous capital investment with large risks involved."). This reality is especially acute for new types of satellite service, such as the MSS/RDSS service.

The potential deterrent effect is likely to be exacerbated where the very act of requiring payment for entry could materially disadvantage the potential licensee in competition with entities licensed or authorized before the implementation of auctions. With respect to the MSS/RDSS, AMSC is already authorized to construct, launch and operate a domestic MSS system for which it did not pay a dime in spectrum assignment fees.

Similarly, as noted above, MSS/RDSS licenses would be disadvantaged in the global market if potential competing systems licensed by other countries are permitted entry in their domestic

markets without paying for spectrum.[15/] Even if none of the foreign systems materializes, however, potential U.S. MSS providers still would be disadvantaged by likely competition from INMARSAT. The INMARSAT Convention and the Communications Satellite Act can be construed to require that Comsat be permitted to access INMARSAT capacity from the United States without making any payment for U.S. spectrum at all. See Convention on the International Maritime Satellite Organization, September 3, 1976, reprinted in INMARSAT Basic Documents (4th ed. 1989); 47 U.S.C. § 751 et seq. (1991). If the U.S. applicants were to have to obtain access to their spectrum through an auction, they would be severely disadvantaged in competing with these other systems.

Of course, the U.S. could still impose competitive bidding procedures for entry into the U.S. market on potential foreign-based international MSS providers other than INMARSAT. However, if the FCC proceeds to charge for spectrum access in the United States, it is a virtual certainty that other countries

---

15/ For example, Canada, France, Japan, Mexico, and Russia have either advanced published or are reported to be considering the implementation of MSS systems using the same spectrum which the U.S.-based MSS/RDSS applicants plan to use. Because of this potential for dramatic differences in entry requirements across national borders, Motorola and Loral noted in their recent joint filing with the Commission that "MSS services that are predominantly designed for world-wide markets, and that will use internationally allocated frequencies that will require licenses from other countries to operate, are not good candidates for competitive bidding." Jointly Filed Comments of Motorola and Loral at 24-25 n.41.